

**Excerpt from the
CITY PLANNING COMMISSION MINUTES
Minneapolis Community Planning & Economic Development (CPED)
Planning Division**

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MEMORANDUM

DATE: March 1, 2012

TO: Steve Poor, Planning Supervisor – Zoning Administrator, Community Planning & Economic Development - Planning Division

FROM: Hilary Dvorak, Interim Planning Manager, Community Planning & Economic Development - Planning Division, Development Services

CC: Jason Wittenberg, Interim Planning Director, Community Planning & Economic Development Planning Division

SUBJECT: Planning Commission decisions of February 6, 2012

The following actions were taken by the Planning Commission on February 6, 2012. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued.

Commissioners present: President Motzenbecker, Huynh, Kronzer, Mammen, Schiff, Tucker and Wielinski – 7

Not present: Cohen (excused) and Luepke-Pier

Committee Clerk: Lisa Baldwin (612) 673-3710

7. Linden Corner (BZZ-5420 and Vac-1596, Ward: 13), 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S ([Hilary Dvorak](#)). This item was continued from the January 9, 2012 meeting.

A. Conditional Use Permit: Application by Carol Lansing with Faegre & Benson, on behalf of Mark Dwyer with Linden Hills Redevelopment, LLC, for a conditional use permit for a multiple-family dwelling with 40 dwelling units located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S.

Action: The City Planning Commission returned the conditional use permit for a multiple-family dwelling with 40 dwelling units located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S.

B. Conditional Use Permit: Application by Carol Lansing with Faegre & Benson, on behalf of Mark Dwyer with Linden Hills Redevelopment, LLC, for a conditional use permit to increase the height of the building from 3 stories/42 feet to 5 stories/59 feet for property located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S.

Action: The City Planning Commission adopt the findings and approved the conditional use permit to increase the height of the building from 3 stories/42 feet to 5 stories/59 feet subject to the following conditions:

1. The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.
2. The height of the proposed building shall be limited to 59 feet.
3. The fourth and fifth levels of the building shall be setback as shown on the plans.

C. Variance: Application by Carol Lansing with Faegre & Benson, on behalf of Mark Dwyer with Linden Hills Redevelopment, LLC, for a variance of the LH Linden Hills Overlay District to allow the building to be located more than 8 feet from the front and/or corner side property lines adjacent to Upton Ave S and W 43rd St for property located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S.

Action: The City Planning Commission adopted the findings and approved the variance of the LH Linden Hills Overlay District to allow the building to be located more than 8 feet from the front and/or corner side property lines adjacent to Upton Ave S and W 43rd St located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S.

D. Variance: Application by Carol Lansing with Faegre & Benson, on behalf of Mark Dwyer with Linden Hills Redevelopment, LLC, for a variance to allow bicycle racks and a vehicle height limiter (an overhead bar with columns) in the required front yard setback along Upton Ave S for property located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S.

Action: The City Planning Commission adopted the findings and approved the variance to allow bicycle racks and a vehicle height limiter (an overhead bar with columns) in the required front yard setback along Upton Ave S located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S subject to the following conditions:

1. The vehicle height limiter shall be constructed out of materials that match the character of the development.
2. Landscape materials shall be planted in the area between the north edge of the driveway and the north property line in order to provide additional screening of the bicycle racks and the vehicle height limiter.

E. Site Plan Review: Application by Carol Lansing with Faegre & Benson, on behalf of Mark Dwyer with Linden Hills Redevelopment, LLC, for a site plan review for a mixed-use building located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S.

Action: The City Planning Commission adopted the findings and approved the site plan review application for the property located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S subject to the following conditions:

1. Approval of the final site, elevation, landscaping and lighting plans by the Department of Community Planning and Economic Development – Planning Division.

2. All site improvements shall be completed by February 24, 2013, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.
3. The proposed four-foot high solid wood fence located along the north side of the property shall be a four-foot high decorative fence that matches the decorative fence on top of the retaining wall.
4. There shall be at least one bicycle rack (accommodates two bicycles) provided in the commercial level of the parking garage.
5. The applicant is encouraged to provide at least 40 bicycle racks (each one accommodates one bicycle) in the residential level of the parking garage.
6. The specific elements, materials and layout of the proposed pocket park on the boulevard along Upton Ave must be approved by Public Works and CPED staff in consultation with the neighborhood.
7. The applicant shall work with CPED staff to explore on-site waste removal options.

F. Vacation: Application by Carol Lansing with Faegre & Benson, on behalf of Mark Dwyer with Linden Hills Redevelopment, LLC, for a right-of-way vacation (Vac-1596) for a trapezoidal area adjacent to 4264 Upton Ave S.

Action: The City Planning Commission recommended that the City Council accept the findings and **approve** the application to vacate the trapezoidal area adjacent to 4264 Upton Ave S subject to the following condition:

1. The current property owner shall provide an easement to the City of Minneapolis for the area that will be vacated so there is no interruption in the pocket park amenity. The easement shall be terminated if building permits have been issued for the development project.

Staff Dvorak presented the staff report.

President Motzenbecker opened the public hearing.

Mark Dwyer (4632 Washburn Ave S) [not on sign-in sheet]: I want to thank staff for their help in guiding us through the application process. I've lived in Linden Hills for 18 years. I've been very active in the neighborhood and in the last six years have been the head of the Linden Hills business association. I like to think that my approach to this project, which I knew was going to be done by somebody somewhere is that that despite my lack of experience as a developer and the fact that I never want to do this again, I believe that a project that could be done more locally might be more beneficial to the outcome. With that, I'd like to introduce our design and development team who have a very local presence in Linden Hills. TEA2 Architects, a very reputable architect firm. They've officed within a few doors of the site for 17 years, received many accolades that much time ago for converting the fire station building over some opposition. In my view, nobody knows better or is better suited than to take on this task of designing this project for our neighborhood. In a moment, Dan Nepp would like to speak to some of the project design. Jeff Wrede from Momentum Design Group. Jeff lives just across France Ave from us. Momentum brings the discipline of commercial mixed use design to our design team. Patrick Sarver is a Linden Hills neighbor who himself was awarded volunteer of the year some time ago in the neighborhood. Pat is our landscape architect and also our civil engineer. Also helping with landscaping has been Bob Harvey. Bob's business, Edelweiss Design, has been involved in maintaining our flowers at the intersection for several years. Carol Lansing has been wonderful as our attorney with Faegre Baker and Daniels. Carol would like to speak after

Dan. Carol also happens to be a southwest Minneapolis neighbor. Steven Jansen is here also and can answer questions regarding environmental. We'd like to say that this is a locally grown effort and public engagement, we'd like to hope, has been second to none. This project was announced two and a half years ago when I first assembled the properties and announced that we would be taking on this effort. Initial plans were veiled at the park at our festival in the spring, ten months ago. Since then we've had 14 meetings with neighbors at the park, went through our neighborhood council and our neighborhood zoning subcommittee. We've also sponsored four design focus groups that we initiated with 40 participants from all viewpoints on the project. These were wonderful meetings. Long story short, we think we have a better project for their efforts. Through it all, we really tried to maintain and constantly update a very robust website. I understand we've had a lot more information put out there on the website than might be common to developments. The model you see here was very instrumental in a lot of different neighborhood discussions. The buildings around it, if we look at those, we're not the tallest, we're not the most dense in terms of the number of units and these buildings - many of them are shown without much articulation, they're very flat fronted. We believe that we're bringing far more articulation to the picture than some of the other large buildings around us. My belief is that what makes any neighborhood great is the sidewalk experience and the businesses around the sidewalk and the interplay between that and the public amenities in the businesses. In my view, this project replaces a current site that is largely asphalt that is contaminated with things that are going to make the neighborhood better. We will be mixed use, which is one reason we're going to ask for that 59 feet that we originally asked for. There's great demand right now for the condos in the business spaces. We'll have widened the sidewalks that are there now. Our public park amenity will be doubled in size. We'll be adding a water fountain to it. A restaurant patio will appear on W 43rd St. We'll have a large indoor commons area where we'll have art displayed from local artists. We're going to build this building to a green LEED standard. Our storefronts are going to be painted and colorful and represent a lot of the other storefronts we already have at the intersection. In closing, I would just say that given that it's the street experience that makes this such a great place, I would think that the addition of a beautiful building that's well articulated could only make our business better. I'd like to introduce Dan Nepp, our architect.

Commissioner Tucker: What happens if that vacation is not approved?

Mark Dwyer: Great question, we don't know. Maybe it's something my architect can speak better to in his presentation.

Dan Nepp (2724 W 43rd St): Since we're so close, we have a vested interest in this project and trying to make it a good neighbor. We tried our best to make it a good neighbor. We tried to create a quality of living as a good neighbor and a design that would stand the test of time well. We need to fit the 90,000 square foot building that is allowed by the city as best we can to the surrounding context and be as respectful as we can to its neighbors. When we started this design, we went with multiple configurations to try to find the best, most respectful form that we could. We found that a five story building, set back significantly from the required setbacks, was further away, more respectful to the immediate neighbors and actually created a better shadow study than an as of right 42 foot high building pushed up to the minimum setbacks. As you can see here, what this drawing shows is that we are actually, on the south side, 12-14 feet back to allow for the terrace for the restaurant space. On the west side, it's almost four feet back from the required, already set back, of 14 feet and that's only for this portion right there that is only about 40% of the residential edge on that side. The rest of the 60% is much farther back or has not been built on at all. The north actually has a setback of an additional 6 foot 8 from the required 14 feet. The five story building in this configuration is a thin building which provides for quality condos

because it provides further appropriate format for them in view and light, etc. The quality condos creates the engine that creates the quality building and allows for long lasting materials, articulated for, quality detailing and a building with historical feel that will last. We had been focused since the beginning on scale for this building. We knew that anything over two or maybe three stories would be a concern for some neighbors. Our whole approach has been to reduce physical height and bulk, we have done this by setting back the fourth and fifth floors significantly from the third and at the same time we've created a deep four foot cornice on the building at the third floor. This cornice creates a crown to the top of the wall and suggests an outdoor room capped at three stories. More importantly, it increases the cutoff angle from common viewing angles at the street level. In regard to upper floor setbacks, beyond the setbacks that we did at the first floor, we've increased the setbacks up on the fourth and fifth. On the south side, we've increased it to 12 foot six on the fourth floor and an additional nine feet from fourth to fifth. On the west side, where it does get closer to the setbacks, we have set back an additional nine foot four. On the north side, from the six foot eight dimension we talked about, we've actually set back another two feet from that side. On the east side, we set back an additional eight foot six from the third floor. These setbacks like this all the way around the building are not easy to do or inexpensive to do, but are vital for reducing scale and shadows from the building. On the site plan that you see here, we have broken the building into two pieces; we have the north and south ends with a resident and public lobby entrance splitting the two. This access through here, we show that we recess that back from the east side of the building. That allows us to split the building into two forms on the outside which we'll show in a second, but also shows where the public can go through the building to the surface parking in the back of the building and access the elevators that are there. You can see here, that's the lobby from the east side. We also changed the look on the east side. On the north end, we have more brick on that side. We have different glass bays on that side, a different rhythm on the north than we do on the south end of this elevation to further break up that façade. We've been using materials that are common to the neighborhood, we use brick and stone on the lower floors. We're also using those to further cut the visual height by having a first floor in limestone or light brick with contrasting brick above. We've also created a building that is very articulated in form, we have recessed balconies, we have balconies that partially project with brackets on them, we have the four foot cornice, the window bays and window panels below the windows in relief, all with a historical feel. Quality condos drive a quality building for what we need to do here. About staff's recommendation to reduce height from 59 to 56 feet, this elevation shows those heights on a per floor basis. The development team has made every effort to keep height as low as possible. The 59 foot, or 58 foot eight inches, is the lowest we can go while maintaining floor to ceiling heights required for a successful mixed use development. Our initial designs were actually at 62 feet and we lowered them early on as much as possible in anticipation of neighborhood concerns. In a letter that you received from Carol Lansing, we state that from our own research there have been three buildings approved at 56 feet that were for five stories, but were without a commercial component, they were residential only. There were also two buildings approved at five stories with mixed-use condos at a much higher height of 64 feet. In our condos from floor two to five, before we even started the design we were going out and reviewing other projects that were comparable to the Linden Corner project to see what their ceiling heights were as a key criterion. None of them were below nine feet for floor to ceiling heights. Our ceilings are from 8 feet 10 to 9 foot 4. We have been advised that high quality condos prefer nine and a half to ten foot ceilings. Floor thickness is approximately two feet thick, which is very typical. Significant reductions in this are very costly and result in very small changes in height. We believe the project resources are being put to a better use by creating the mentioned setbacks and articulations. In regard to the commercial leasing height, it's been recommended by our commercial leasing agent for the project to be 12 feet from the bottom of the beams on the first floor. We've already compromised

this down to 11 feet with a 14 foot total from floor to floor. In the staff report, they have already concluded that a shadow study for our building at 59 feet, our minimal, that this structure at 59 feet actually creates less shadows than an as of right 42 foot building placed at the allowed setbacks and that there is no substantial impact on this one solar panel in the near vicinity. The proposed height of the building is in conformance with the policies of The Minneapolis Plan for Sustainable Growth. If you'll note, the condos to the north actually shadow their sister building more than we shadow that building. We also included in your packet a new shadow study as a comparison from 56 to 59. We believe those changes are very minor, less than five percent change on the shadowing. If you'd like, we can talk about that. In summary on height, we've worked very hard and I think successfully to reduce height, bulk and shadow impact on the neighbors as much as we possibly can. A further reduction to 56 feet does not approve on these efforts but will create a building that is not marketable and does not appear to be consistent with some previous approvals. We request that you approve at 59 feet. Responses to the Committee of the Whole suggestion, we responded to each one. They asked that the entrance from the lobby be connected to the resident public lobby. They suggested that we have tables and other features in the lobby, we have added the tables and a history or art exhibit in that area. They also suggested on the fourth and fifth floor we do not go as dark of a brown as we had. We studied multiple colors and in the end we decided to just lighten the brown from a dark to more of a middle brown as we believe that the fourth and fifth floors to be recessive we should make them slightly darker than the colors below it. We also responded to the neighborhood groups and their suggestions. There was a strong focus in both groups that they wanted to create a more unique, personal and varied storefronts to create a better street experience. We have done that, we believe that was a great idea. They also suggested that at the corner entrance, that the corner façade actually be angled, which we changed and what exists now. This is because the other three buildings on the corner have an angled façade at their corner. Our approach to the corner pocket park, it will not be the same space once it is abutted up against the building. Trees cannot get pushed right up to the building. With the building on two sides, we cannot recreate the same experience up against the building. The building walls will be difficult to deal with at that point when they're behind this park. If we carve out this much space, we will need to gain that space back somewhere. That needs to happen at both the first floor and at the condos levels so in order to achieve that, we will have to eliminate the restaurant and terrace space to gain the pocket park back. The pocket park does provide a nice amenity, a shady sitting spot. We believe in exchange for what we're doing, we're providing three amenities. We're providing that shady sitting spot back as you see here from this aerial view, that is twice the size as the original one with trees, benches, a pergola and a water feature. We're also providing a terrace for the restaurant which is a different type of social engagement with the pedestrians and the street. We're also providing an open, covered commercial corner which provides a different level of activity for people to sit on the steps or get out of the weather. There will be a historical plaque here and water fountains for people and pets. Our general approach to the corner is that we feel we need to complete the fourth corner and hold that with building and not provide park there. We believe this follows The Minneapolis Plan for Sustainable Growth [tape ended]...it interrupts the normal expected storefront rhythm that creates the appropriate activity for a business corner. We believe the corners are extremely important for a business node and ends of blocks as they are a culmination of activity and density for the block. They are typically more visible than the length of the block and are important for what they need to convey. Corners of blocks are visual markers of activity in the area and I wanted architectural representation of the activity that wants to be there. The architectural embodiment of our shopping activity at the corner creates the appropriate backdrop for the business node, it also increases the desire to shop and socialize in front of and within that corner. Lastly, I solicit two emails from people I know of that I do not know personally, they are

at the end of your packet here, one is from Dean Fisher of the College of Design and the other is from Director Ignacio San Martin who is the Dayton Hudson Chair of Urban Design and Director of Metropolitan Design Center. They are both in support of the direction of this project and as Director Martin stated in his email that you have there, “your proposal very much in compliance with the advice and recommendations of the Metropolitan Design Center as they advise communities throughout the Twin Cities.” Thank you.

Commissioner Huynh: Can you spend a minute or two just walking through the site model that you have as far as building heights, explaining a little bit more of the site context? I know a lot of the submittals that we have are focused on your building height so if you could take a minute or two to inform us that’d be great. Also, regarding your brief statement about green LEED standards, I think the applicant mentioned this, can you clarify the extent of sustainability and LEED that you’re enforcing on this project?

Dan Nepp: I don’t have the specific numbers for building heights in the area.

Commissioner Huynh: Even speaking to the number of stories would be great.

Andrew Moeding (TEA2 Architects) [not on sign-in sheet]: This is a seven story building at the top of a hill and across Sheridan we have two four story buildings, two story buildings on the corner with billboards on top, three to four story buildings to the north as well.

Dan Nepp: We also have the Lake Harriet building with the roof there which you can see actually exceeds, at the peak of the roof, the height of our building because it’s on a hill.

President Motzenbecker: Across the intersection on the corner, what is that there?

Dan Nepp: That’s three stories there. That’s basically a four story across from the fire station. It has a typical thing done from that ear where there is a three or four foot retaining wall, some bermed earth and then garden apartments on the first floor, but basically from grade it’s four. The LEED, since we have not gone through approvals here yet, we have not completely detailed this out, but we plan to use materials from the area, we’ve researched brick from within the radius of the building, we’ve looked at putting in electric car stations, the bikes that are there, we’ve looked into green roofs as a possibility but that’s not fore sure we will do something like that yet for the building. Our goal is to make that we don’t have all the specifics and have not done all the paperwork on that.

Commissioner Huynh: Were you just using it as a framework as far as just sustainability measures or were you actually looking at compliance with that certification?

Dan Nepp: Our goal is to comply with the certification.

President Motzenbecker: Do you have a target for silver or gold?

Dan Nepp: Minimum level, silver.

Commissioner Wielinski: The one building with the solar panels that it’s only going to affect for an hour and 14 minutes, how much of their full solar time is then... do they get eight hours a day or do they get an hour and 16 minutes?

Andrew Moeding: The worst case scenario is an hour and 45 minutes of coverage in the morning in the middle of December. Most of the year there is no shadow really on the building so in the winter you have, at most, just under two hours of partial coverage in the morning.

Dan Nepp: For the total day, it goes until about 4pm so there's about an eight hour window on the shortest day of the year and so it covers about that amount. The details to that, the amount of actual foot candles in the sky, at low angles in the morning on December 21st is not a lot. Also, there's a lot of overcast time and also because there is a low angle there is also a reflectivity that happens on the panels because they are not heating directly in so you're not gaining all the light that's aimed at the solar panel. It is a very low amount being lost because the light level is low and it's such a low angle.

Carol Lansing (90 S 7th St) [not on sign-in sheet]: Regarding the vacation area, I just wanted to show you where it is. Our understanding of the original intent and purpose of this area becoming a plaza and public gathering area was because the city did need some additional area for sidewalk when they reconstructed this street and to provide a public amenity, but also in large part to screen this parking lot and it seems that the location of the amenity was driven in part by that need, which will go away. This is the area we're talking about. I think you can see that what's being proposed will be a much nicer and larger area. Regarding the assurances, what we're proposing is that the current land owner could give a new easement that would be temporary so that it wouldn't have to be vacated again, but would become permanent if the project did not begin in two years. The other benefits to what we're proposing with this new pocket park area, is that this is the existing sidewalk which curves out into this large boulevard bump-out, the sidewalk would be straightened against the building which is better for the retail uses but also better for accessibility, creating this larger space. The other primary area that I wanted to address with you is consistency with the Comprehensive Plan, specifically the neighborhood commercial nodes in the C1. The main point I want to make is that a neighborhood commercial node not all of them are alike. The guidance in the Comprehensive Plan, which does suggest that smaller or mid-scale height is better in neighborhood commercial nodes, that's guidance that still has to be applied in context. Linden Hills is a relatively large and much denser, in terms of commercial uses, neighborhood node. For example, 50th and Bryant, 50th and Penn are also neighborhood commercial nodes, but those are surrounded with R1 and R2B zoning. While a five story building there might not be appropriate, in this neighborhood commercial node, it already includes this C2 and OR3. It already includes zoning that would allow four stories or six stories as or right. I have a similar colored map to Hilary's. It's surrounded by additional green for six story and yellow for four stories. Right north of this property where we have the Linden Corner building, it could be 56 feet as of right redeveloped today. In addition to requesting that you approve the height as requested, we are requesting that a condition on the variance for the bike racks in the front be modified so that some different kind of landscape screening can be used that's too shallow between the grade and the top of the underground garage there to do the type proposed by staff as a condition, but we do want to work with them to do additional screening. We have attempted to hit just on the key issues raised in the staff report or in comments, but we know there are many comments that you've received and that you will hear tonight. If we haven't addressed them and if they are of any concern to you, please ask us. We didn't want to speculate on everything you might think is important. One final comment, we know shadowing was an issue in the last application. The shadow study that we've given you shows that the difference between 59 feet, 58.8 requested and 56 is really quite minimal. It's residential properties that are being shadowed and it moves through the day and it does not create a public safety concern as was discussed previously. Thank you.

Commissioner Tucker: I wonder if they have some estimate of the area inside the curving sidewalk compared to the area to be vacated. If you could work on that and give that to me later on.

Christopher Maddox (4400 Upton Ave S #306): Along with many Linden Hills residents, I recognize that the land at 43rd and Upton is likely to be developed. In fact, I'm in favor of that. What is an issue for me is height and scale. It's my opinion that the Linden Corner project as proposed would have a very destructive effect on the pedestrian friendly feel of the business district. It would set a precedent that overrides current zoning code limiting height to three stories and it would pave the way for future developers to argue for taller, larger buildings that do not fit with the surroundings. Last summer, it became clear that a significant number of residents were opposed to a five story, 90,000 square foot development on that corner. It was at this point that the developer announced the formation of design rings, or focus groups, a process that was labeled as public engagement. I subsequently received an email inviting me to attend. For me, negotiation is often the best way to bring opposing sides together so I was genuinely interested in the process where substantive dialogue and compromise were possible. After reading the participation requirements, I realized the criteria was set up in such a way to prevent the dialogue that I sought. In stating the volume below 90,000 was non-negotiable, the developer expected, in my opinion, all participants to accept the belief that market place reality offer to viable alternatives. To me, this revealed an intent to build above the zoning code of three stories, the maintenance of which I'm in favor. I therefore concluded that I could have no constructive part to play if the conversation were to be centered around issues of décor and color and not height and scale. In fact, fewer than 30 residents actually completed the ring process. I also questioned why the city doesn't encourage negotiation and mediation in situations like this, especially given the fact that almost 2000 people have signed a petition in support of the zoning code and against the development. Thank you very much.

Bob Bayers (2617 W 42nd St): My family hardware business is at 4312 Upton Ave S. This is my neighborhood. I've lived here and worked in the family hardware business for 45 years. I first heard about the project almost three years ago. It was a meeting called together to seek out public input. I firmly believe that the public hasn't been listened to. I think they got started and started designing and didn't proceed with... what I heard was that they wanted to hear from the public what should go there instead of what they wanted to build there. One of my concerns that had just been brought to my attention a few weeks ago was that the trucks cannot get to the back of this building to service it. A garbage truck would have to empty the trash from the street, parking in front of other businesses. I think this is just too large of a plan for this neighborhood. Unfortunately, I see this whole neighborhood divided on this issue. My customers and my fellow businessmen are divided on this issue, but I'm glad I had an opportunity to come and let you know that at least it wasn't totally supported by all of the merchants on the corner. Thanks.

Bob Frey (2614 W 49th St): I've lived in Linden Hills for 15 years. My wife Laura Ferster has lived here her entire life. We are both very disappointed with the development proposed for the corner of 43rd and Upton and we are here today to express our opposition to this project. In short, the development exceeds existing zoning limits in terms of height and density and does not therefore fit the character of the neighborhood. The proposed project lacks vision and creativity and is for these reasons, size, scope and character, that there has been such a large and vocal neighborhood opposition to this project. I'm a former attorney and currently a teacher at a public high school. I teach a class called Urban Geography as well as a class called Advanced American Studies. In each of these classes, I encourage my students to take advantage of the wonderful opportunity they have as American citizens to be politically active. I try very hard to impart to

them the idea that freedoms articulated in our constitution empower them and enable them to play a role in shaping their world. Essentially, I try to teach them that they can, in fact, make a difference. The grass roots opposition to the proposed development is a perfect example of what I try to teach. Hearing an entire community has come together to protect a character and integrity of its beloved neighborhood. Nearly 2000 citizens have signed petitions, people have shown up at community meetings, citizens have called and emailed government officials, all in an effort to protest this development. The City Council as an elected body, should I believe, act in accordance with the stated desires of the large majority of those citizens who have weighed in on this issue. After all, in a representative democracy, it's through our elected officials that we the citizens have our best interests protected. Finally, it's important to mention that the neighborhood is not blindly opposed to any sort of development. Rather, neighborhood citizens are opposed to this development and for good reasons. It exceeds pre-established zoning limits for both height and density. A project designed within the scope of these limits would almost certainly not have met the forceful opposition this project has faced. A more creative development plan, a more visionary plan, would have manifested in a project that would not so clearly violate the zoning limits. Why have zoning regulations if each time a developer wants to exceed them, such a request is granted? Simply because a conditional use permit could be granted, does not mean it should be granted. Again, Linden Hills residents have demonstrated strong opposition to this project and while the Planning Commission staff may have reached its own conclusions, that fact does not negate the opinions, beliefs and conclusions drawn by the thousands of Linden Hills residents who have spoken out regarding the very same issues. Respectfully, I request that this body, in considering the proposed development, acknowledge and abide by the clear wishes of neighborhood residents that the development not be allowed to proceed in its current configuration. Thank you.

Laura Ferster (2614 W 49th St): I grew up in this neighborhood. Me and my husband live there and we have a seven year old child. We're here to voice our opposition to the development as planned. In my opinion, it is just too large for this tiny epicenter of this unique area. I see that the building configuration on this model as it's laid out. I know about the surrounding buildings that are larger, but if you are in this area, on this corner, at this street, the feeling that you get of such a large building encroaching down on you is sort of hard to explain unless you're there. I drive through this little epicenter every day coming and doing and the feeling and sense of something that is as large as this scale is hard to describe. My understanding of the public planning process is that it should be collaborative, transparent and an interactive process which I think we're demonstrating here tonight. As difficult as it may be, a truly democratic process embraces an engaged populous and fosters an active community engagement in creating a common environment. In other words, planning for the commons. To the extent that the affected citizens have weighed in on this, I think it's worth saying that the response from the neighborhood has been a remarkable record of interest as well as intense opposition. In the past several months, over 2000 petitions opposing the project have been signed and submitted to this commission as well as Betsy Hodges as well as in December 2011, nearly 600 individuals attended an open house organized by the Linden Hills community committee in order to disseminate information about this project. Nearly 600 individuals attended that open house, which is a remarkable number of people to come out in December to look at the project. As a result of that open house, 537 questionnaires were collected regarding the project. The overwhelming data from that open house shows that there was a margin of 73% against and 27% for this project. A majority of the population that was canvassed, the only real data that exists to show support for this project, is not supported. There is serious community concerns over the project and that have been voiced and they include traffic congestion, parking insufficiency, safety from the additional traffic, garbage trucks having to come in and out of small locations to

service the proposed building, as well as the vacation and loss of the public gathering space. The pocket park we've been discussing is being easily picked up and moved somewhere else. There have been years of care that has been placed into this pocket park and developed in the community and it's used and it is important. I don't think it's fair to just pick it up and move it. I believe, that it is incumbent upon the developer and the city planners to recognize that further meaningful collaboration with the community is essential for a successful outcome for all. I sincerely hope the Minneapolis City Planning Commission members take their stewardship of the city planning process to heart and do not approve the zoning variations and CUP for this particular project in it's currently proposed, controversial scale. Thank you.

Bob Russell (4225 Sheridan Ave) [not on sign-in sheet]: I've talked to many people that live in the neighborhood. Their reaction is usually shock that it's so big and it doesn't fit. The reason this neighborhood has stayed like it is, quaint and charming, is because of the absence of something exactly like what's being proposed. When you're hearing about the buildings on the hill, yeah, they're up there, but they're not in the heart of Linden Hills. This proposal is five stories high, 90,000 square feet and is sitting in the heart of Linden Hills. We're not opposed to progress or development, we're opposed to the scale and the height of this building. If it were kept to the zoning which was put in place for a reason... we're not against development, something's going to come. We're against the scale of this thing. I ask that you think about that. Thank you.

Rob Shainess (4251 Vincent and 4247 Vincent): I'm an attorney representing Dave Scott and Nancy Belbas. I'm only interested in talking about two of the approvals that are requested; one is the issue of 40 dwelling units. On that I'm going to address a legal issue that I've raised with the City that hasn't been responded to yet. I'm also going to address the height issue which I think is the predominant concern of residents. On that I will address specific facts that haven't been brought to your attention yet. The 40 dwelling unit issue is more of a problem than anyone has let on. There was a text amendment back in December that amended multi-family housing to be up to 40 units or in excess of five units. If you read that amendment, it does not apply to mixed-use. On the books today, there is no permitted or conditional approval for a mixed-use building with more than 4 units. The staff recommended that that approval be returned to the developer because it's not required, no approval is required. Their position, as stated in the staff report, is that if you have a statute or an ordinance in this case that says that multi-family is permitted to be in excess of four units or five units, residential is allowed to be in excess and you're combining those two things together, then it must be ok. That isn't what the law says. Mixed-use is a separate use under the law. I can't presume to know what you intended when you approved the text amendment or what the City Council intended when they passed it, but I know what it says and it doesn't permit you to approve 40 dwelling units. I wrote a letter to the City Attorney's office if I may. On the height issue, you're asked to consider whether it's injurious to the use and enjoyment of other property. If you find that any of these conditions are not satisfied, you must vote no. It is injurious to the use and enjoyment on the west side. My clients are on Vincent Ave which is directly abutting the building on the west. It's a five story building, it's recessed on all sides except for the side facing my client's property. There are jutting out balconies on that side. Essentially what is being created are balconies that look clear over my client's private yard. The elimination of privacy entirely is what will happen if you permit this height. You've heard enough about shadow effects, that's another injury that's anticipated. You're asked to consider whether or not this is consistent with the Comprehensive Plan and what troubles me a little bit is that that the staff report was a little bit selective about what elements of the Comprehensive Plan are discussed. For instance, on size, the Comprehensive Plan says 'smaller scale multi-family residential development is more appropriate along community corridors and neighborhood

commercial nodes.' For scale, it talks about Policy 1.2 of the Comprehensive Plan which seeks to ensure appropriate transitions between uses with different sizes and scales. I don't know how you come to an appropriate transition when a residential home is right next to a five story building. I don't think it's a transition to say that there's 60 feet between door to door. You're asked to consider the scale and character of surrounding uses. This is a C1 zoned area. The surrounding buildings are one to three stories tall. There is not a single building abutting this property that's taller than that, but it's mentioned all the time that there are these four and seven story buildings... first of all, the seven story building is not seven stories, it's six stories. It's at 2800 44th St. What you need to do to compare these buildings is ask not just how tall buildings are in the area but how is it's use comparable. The 2800 building, six stories tall, and it's at the top of the hill but it's surrounding by parking lots. To the west, whereas this building will have residents, that building will have a huge parking lot and then a school and then a church. Its shadows are cast on a parking lot. It's purely residential, it's not mixed-use so it's not getting the kind of traffic that a mixed-use building is getting and it's not invading on or encroaching on any small residences. It's also an OR1 zoned area, it's not within the C1 area and it's not within the commercial node. The four story buildings are also purely residential, also surrounding by parking lots and not abutting up against a residence. This will be precedent setting should you approve it.

President Motznebecker: I'm going to ask you to summarize now because we're run to the 20 minutes and we have quite a few people left to get to.

Rob Shainess: That's fine; I'm all set. Thank you.

Sara Schumacher (4208 Upton Ave S): I have lived at the corner of 42nd and Upton for the last 23 years. I am from the era when there was a gas station at the corner of 43rd and Upton. I have seen many positive changes occur in the Linden Hills neighborhood over the last 20 years. I would like to address one of these changes - the Linden Hills pocket park at the corner of 43rd and Upton. This was a unique collaboration between the city and the residents of Linden Hills and is an excellent example of how neighborhoods and cities can work together in a successful way. Together in 1993, we gained a variance for public access to a small piece of property from Famous Dave's that was to be used as a public gathering space. It has been a huge success. In the last 20 years this mini park has become the heart beat of the Linden Hills community. It is well used, well known and clearly loved. Now the developer, who has accumulated almost 28000 square feet of property and has no hardship, is requesting a vacation of this gathering space and intends to build over it. In return we are offered an inferior space that is already a public right-of-way and is currently being used as a small garden. This space juts out into the street, has no sidewalk buffer, and is dangerously exposed to traffic. The result of the developer's proposal is not only the net loss of 800 square feet of precious public green space located at the heart of the Linden Hills Business area but also the loss of a well-established sense of community. Currently our corner park is being maintained by local businesses who also represent the residents. The developer has requested that the new park be maintained solely by the development. This plan would remove the community input into the space and put our community park into the hands of one business. Public Works has reviewed this vacation request and recommends a denial. This denial, was not included in the most recent staff report so I would like to submit a copy of that denial and other staff correspondence at this time. My conversations with Public Works have indicated safety concerns for the new pocket park, the loss of public green space, and the failure of the developer and the city to actively engage the community in this discussion. We the residents ask for your help in protecting and preserving this neighborhood treasure. We ask that you deny the developers request for a vacation of our beloved pocket park. This is the area being

recommended for the new pocket park. As you see, there will be no buffer between where the seats and benches are going to be and the public streets. Thank you.

President Motzenbecker: These are the items I have so far; we have height and scale, out of character, public engagement process, neighborhood desires not listened to, traffic service access, loss of the pocket park and setbacks, elimination of privacy. If we could have new information please.

Jeff Magnuson (3010 W 43rd St): I am a member of the zoning subcommittee of the Linden Hills Neighborhood Council. Regarding the service and delivery issue, I'm here to make you aware of what I consider to be a design flaw in this project. The flaw is that large delivery trucks, including restaurant and food delivery and deliveries to the retail stores, plus garbage pickup trucks for the restaurant, retail and residences will not be allowed to make deliveries or pickups on this site, but instead will be required to park at the curb and deliver across the public sidewalk. There are four reasons why this delivery system should not be allowed. Number one, it is contrary to the intent of the zoning code. That intent is to encourage service on site to try to minimize the impact of service trucks on the surrounding residential neighborhood. Number two, it is also contrary to the developer's own initial Traffic Demand Management Plan dated July 21st, which states "loading and unloading of deliveries as well as garbage trucks will be accommodated on site within the parking lot." This delivery system will cause more traffic problems in an already congested area and will also cause large vehicles, including garbage trucks, from this development to drive down neighborhood streets. Because of this, I urge you to not to approve this site plan review application for the project, but instead, send this project back to Planning to resolve those issues. This is a diagram that shows how the applicant is planning to provide for garbage and pickup. Large vehicles will turn down the south part of the site here at W 43rd St, here's where the restaurant is, the restaurant garbage collection is here, the garbage will be dragged about 100 feet across the public sidewalk to the garbage truck which will be here. A similar situation will occur for food deliveries for the restaurant. That truck will come to this point. The reason those trucks are not allowed on the site, there's a barrier bar here that's nine feet high. Any truck larger than nine feet cannot access the back of the site even though that the original plan, I believe, of the project was to provide flow-through traffic. A similar situation will happen for the garbage deliveries on the north part of the site. Here is the garbage pick up for the residents and the office. That will also be dragged about 100 feet to the garbage truck which sits there on Upton. As you can see by this photograph, this is what Upton looks like right now, there's a lot of parking on that street. To have a vehicle to collect garbage sitting on that street double parked in the morning is not really good. I would like to also say that this is also contrary to the planning staff report, page 17. That states that an adequate shipping and receiving facility that is accessible by motor vehicle and located off of an adjacent alley, service drive or open space on the same zoning lot is required to be provided. What good is to provide that space if you cannot get the appropriate vehicle to that space? Why is this done? I speculate for two reasons. Number one; there are concerns about the weight of a fully loaded garbage truck, it is heavy, but I believe that that can be solved. These trucks are driving over a concrete parking deck. There are additional reinforcements and thickness to the deck that can be done isolation of the joints. The bigger issue here is the building height. That is because these large vehicles require a larger height than the overhang. Currently, there's a portion of the building that overhangs, it's about ten feet above the parking deck, to provide those service vehicles to circle through and do this kind of arrangement, which it should do. That building may have to be up to four feet higher. What I urge you to do tonight, is not approve the site plan review and instead send this project back to staff. Send a clear message to the developer that this project, for a new building of this size and scope, is unacceptable to provide servicing off the site. Also send a

message to the planning staff that when they discuss this issue with the developer, that there's no negotiation allowed on this particular issue.

Commissioner Tucker: Your committee clearly opposed the site plan as presented. Do you have positions on the other applications?

Jeff Magnuson: I totally oppose the project.

Kristin Tombers (5701 24th Ave S): I own Clancey's in Linden Hills. We've been there for almost nine years. I have a whole page full of stuff I was going to say all talking about scale as how it relates to the small mom and pop shops in that neighborhood. I'm going to take it down to the very simple issue that we need this C1 zoning to protect our small businesses. The health of our businesses depend on the protection that's provided with the C1 zoning. The very nature of Linden Hills businesses thrive on the small town feel that exists. This building clearly does not fit. Thank you.

Walt Pitt (3804 Upton Ave S): The proposed development does not meet at least two requirements of the conditional use permit, specifically two key issues that are detrimental to and endanger public safety. One is the redesign of the corner. The redesign of the corner on 43rd St and Sheridan or Upton as they come together from the Traffic Demand Management Plan, written by the developer says "this change will still allow cars to turn comfortably at this corner but could make it difficult for heavy vehicles to make the turn." It continues to say, "however, since there were no southbound heavy vehicles observed making right turns at this intersection during the morning and evening study periods, this change is not seen to be an issue. That's incorrect information. This is a truck turning that corner to go to the hardware store. They do go around that corner. Heavy vehicles that have to access the building on that entrance, for instance, the garbage trucks, will also have to turn that corner. They can't guarantee which direction these trucks are going to be coming from. The lack of fire and safety will also be a detriment and endanger the public safety. The resource and staff necessary to safely deal with a 33% increase in height from 42 feet which is approved with three stories to 56 or 59, a three story which is zoned to a five story building. When you have a three story building it's a one alarm fire. When you have a four story building to a five story building that's a two alarm fire and requires different types of staffing and different types of resources to access. I want read something from one of the fire chiefs in Minneapolis in regards to that.

President Motzenbecker: We do have that in our packet so if you could summarize that for us, that'd be great.

Walt Pitt: It's basically that as of January 1st, all Fire Departments across the city will be lacking one person per truck. When the fire elevates to a two alarm fire, which is four and five stories, that these are going to have to come from different parts of the city which are also understaffed one per truck. One per truck is below the national safety average of the fire departments. The Comprehensive Plan does not support this development on this site. This whole thing that's been set up here for you should be oriented the other way because that's the way it actually sits in reality. They cleverly reversed the direction of this whole model so you're seeing it from one side and not actually how it should be oriented.

Tim Voltz (4628 Upton Ave): I'm going to speak to the issue of shadowing the solar panels. It's been identified that there is one property that has a shadowing issue with solar panels. The staff report was based on the applicant's shadow studies with the conclusion that the building

would not have a substantial impact on the functionality of the system. That report was not based on scientific data. Analysis of impact on a solar panel system requires more than a shadow study. The solar company that provided this insulation is in the process of generating its report and is of an opposition conclusion. Since the non-shadowing of a solar system is a strict criteria for issuance of a conditional use permit, we request that you deny this application until we have an independent expert evaluation of that process. I will also note that that solar panel on that house was the result of a community effort to green our community and was funded by NRP money.

Lori Dokkendorf (4236 Upton): I live in the front unit on the second floor and I overlook the site. We've submitted some documents that outline quite a few things, but I'm just going to talk about one thing. The exit driveway, which is located in between Upton Manor and the Linden Corner building which is approximately 63 to 73 feet away. This is where all the traffic would exit and the location of the exit drive between two buildings means that the pollutants that are emitted here will not disperse as they would in an open area. This would deny access to clean air for those of us with windows overlooking the site. Over time, this could have some impact on the healthy of residents. I'm speaking as the mom of a young child whose bedroom windows are so close to this, it's a huge concern of mine. There's no transition between Linden Corner and Upton Manor other than the green space which is actually set back a little bit far to the west and doesn't really provide a buffer of any kind between the building and my building. I have only seen a recommendation for a six foot wall that would divide... it's not really considered a buffer. We're asking you to deny approvals. Thank you.

Jean Johnson (4221 Vincent): I live and breathe this block and this neighborhood. In the essence of time, I just wanted to point out a couple of things. There are three buildings: the dental building and the other two buildings, the flower store and a gift store called Twigs, those are 30 feet. I thought I heard someone say these were four stories, maybe I misheard. Anyway, I wanted to point out that the three other buildings on that corner are 30 feet. This would be almost twice that. Just like people are concerned about McMansions on their block, that's why we're concerned about this. You wouldn't look to the biggest building that is totally out of character way up on the corner and use that as an example of Linden Hills architecture and you wouldn't use it to describe what is really Linden Hills which is what everyone else has been talking about, which is quaint and small scale. The reason that people come to Linden Hills and the reason that people love Linden Hills is because that business node works and the strength of that community and the strength of that business node has everything to do with small scale and being pedestrian friendly. We have home values that are increased by it and a style of life that is enhanced by living in the city and living in a small town. Linden Hills business association and the businesses there have found a balance between serving the neighborhood and also acting as a destination for others from all over the metro area. My fear is that this will change all that and it will change the fact that people use it as a destination and I'm afraid for the businesses in that area because of this development. Thank you.

Terry Schlak (4236 Upton): I've lived in Linden Hills for 33 years. I did give you a packet that has some quotes from many articles written about Linden Hills and I just want to reiterate that our business association promotes Linden Hills as Lake Harriet's little town. It is our logo, our brand, our identity and I feel that will be destroyed should this project go through in its current size and mass. Thank you.

Niel Ritchie (4221 Vincent Ave S): I don't need to go over the technical reasons. It's kind of shocking to see the easy way that staff was able to gloss over or finess the conditions that are required by the zoning code and the overlay. I just want to make a point about this process.

There are people here who have had to hire attorneys because this is the first shot that anyone had at having a conversation with someone about it because the council members basically are checked out of the process until it comes before Zoning and Planning. People are afraid of what's happening here and rightly so. It shouldn't be that way. This shouldn't happen again. This is complex stuff. Mixed-use isn't figured out yet. Everybody wants to build more density. This developer is saying that someone else is going to do it when these are three distinct properties and he's the only one who has had a contract on them, it's nonsense. This could go a lot of different ways in the future and it will. Just because someone has an idea doesn't mean it's a good one and this is a very bad idea.

Paul Engh (4621 York Ave S): I have some photos to give you a sense of the scale of the project and the character of the neighborhood. I have the first photo with the proposed project juxtaposed with the dentistry building. The second photo gives you a sense of the Linden Hills florist store right next to the project and how absolutely large and enormous this is in comparison to the other buildings in the neighborhood.

Alissa Minion (4236 Upton Ave S): I'd like to talk about property values. My unit right over the ventilation shaft. It's interesting to note that in all of these diagrams, our building is part of it. We are part of this if we want to be or not. We don't choose to be. My window is right here. You notice that the ventilation shaft and transformer are moved way away from where the rest of the commercial and residential units of this building are, instead they are right by us. I don't like that I would have to live with my windows closed all the time to keep away from that. My resale value would drop significantly or there wouldn't be any. There wouldn't be a way I could sell a home that you can't open the windows. I talked to a realtor, she said the only option would be for me to walk away. I also want to show you another property that Mr. Dwyer owns. This is the Edward Jones property. You can kind of see how it's taken care of here. This is chicken wire in the back. Instead of fixing the back door, he put chicken wire over it. We have the weeds that are growing over the windows. These things could be taken care of. I don't care if he is going to be knocking it down, if that's his proposal, it doesn't cost that much to get a weed whacker. Thank you.

Constance Pepin (4031 Zenith Ave S): My name is Constance Pepin and I have lived in Linden Hills for 28 years. The reason my family moved here in 1984 is the reason we still live there which is the experience of living in a small historical urban village type community within the city limits of Minneapolis. By limiting height to three stories, the current zoning has helped sustain Linden Hills as a thriving neighborhood commercial district that draws people from throughout the city and beyond. I urge you to uphold the zoning. There's been talk about the higher buildings up the hill, they weren't zoned C1 and they're not seven stories, they're six and they're completely residential. Appropriate development at this corner will increase property tax revenues while preserving and protecting the heart of the Linden Hills business district. But inappropriate development like Linden Corner would likely reduce tax revenues by decreasing the value of nearby homes. Current homeowners have trusted that the current zoning will protect their investments in their home. We've heard from a couple people tonight that that would slip away. If you grant permission to build this, you are in effect, changing the zoning for our neighborhood commercial district. The picture that was shown earlier with the different colors, to me that makes the point against approval. All the other buildings on that corner are C1 and to plop this big oversized building in that space to consume five lots and be essentially a cruise ship on Upton Ave, would in effect change the zoning because who is to stop another developer from seeking to build another tall building across the street? What would they do? They would point to the five story and say ours is only five or six. Some people who are pointing to those other

buildings are really misrepresenting the situation. That is not at the intersection of 43rd and Upton. Those buildings were built within the zoning for those sites. If you grant this CUP you are effectively changing the zoning which should not happen without the required public input process. Thank you.

President Motzenbecker: I've seen a couple more people stand up, I am cutting it off after the two folks. We've gone almost an hour now and so I think we've heard all we need to hear. This gentleman in the blue shirt will be the last testimony for this particular side. Thank you.

Jane Prince: I'm representing Linden Hill Neighbors for Responsible Development. I submitted a legal memo on January 3rd and another on January 31st which are in your packet. I will not be reiterating any of that. The applicant should have legal or equitable interest in all of the properties for which he has submitted applications and he does not have that because he has no legal or equitable interest in the pocket park. Rezoning of the R4 parcel violates and is in conflict with Section 535.210 requirement of the code relating to lots containing two or more zoning classifications. When lots contain two or more zoning classifications, one can rezone without going through the rezoning petition process only if the larger zoning, the C1, use is 75% or more than the R4. The R4 comprises 28% of the lot so this was illegal and he should have had to go through the petition process to rezone the R4. Finally, it's important to note that the board has not taken a vote on this issue. They will be voting on these applications tomorrow night. They were never notified by CPED of the applications for pollution clean up grants. Finally, the applicant has [tape ended]...

Thomas Paulson (4949 Upton Ave S) [not on sign-in sheet]: My wife and I moved to the neighborhood, we live in Fulton, because the neighborhood is balanced and authentic. Balanced and authentic neighborhoods are fairly scarce in Minneapolis. That is why we have chosen to live there, that's why we pay the property values that we have there and I would assume that that is also the reason why many people live in Linden Hills for the usability and aesthetics of that. I've seen no evidence that if an exclusion was made to the zoning it would be good for Minneapolis. I would certainly move, others might move, so the property values for the whole neighborhood may go down. You might get more property taxes from one particular node but not from the community as a whole. Thank you.

Tom Casey (2854 Cambridge Lane, Mound): You have in your packet my 13 page memo, is that correct?

President Motzenbecker: Yes, that is correct.

Tom Casey: I just wanted to add that you only need one reason to say no, you have ten factors, one reason, if one of those factors fails you can say no to the project. I have Lori Dokkendorf that wants to distribute some pictures here so you can see the impact on the Upton Manor property. That's it. Thank you.

President Motzenbecker: That was 50 minutes of testimony. We're going to allow the same for the pro discussion. Although if that ends sooner we will not be worried about that. I will allow the pro discussion to begin so whoever is ready, please come up and follow the same process of name and address for the record.

Maggie Koerth-Baker (5037 Xerxes Ave S): I don't live within the boundaries of Linden Hills, but Linden Hills is my neighborhood. It's the community that I shop in, it is the place where I

participate in community events and the services that I use. I moved to this neighborhood because of density. I moved here because I enjoy living in an area where I can walk less than a mile in any direction and end up in a dense area that allows me to do shopping and allows me to not have to drive a car. I think that that is a major benefit to both me and the city. The city of Minneapolis has said that they are interested in sustainability and studies have shown that mixed use developments of multi-stories on infill lots like this one are a key part of building sustainable communities and reducing the number of vehicle miles traveled and the amount of fossil fuels that we're reliant upon in the United States. A 2004 study showed that smart growth development which includes projects like this would be capable of reducing our fuel dependence by 44%. The EPA has said that projects like this are key to building sustainable cities. That is the main reason I am in favor of this building. It is not perfect, it doesn't have to be perfect. If we wait around for a development that is going to meet the needs of every single person in the entire neighborhood, it will never be developed because my perfect is different from their perfect and different from somebody else's perfect. The point is that this does something good for the community, it does something that is demonstrably and objectively in research good for our city. We should go ahead and build it. I should also like to point out that we talk a lot about the majority opinion of the neighborhood and I want to point out that 2000 people have said they are against this, but the neighborhood has 7500 and the surrounding communities have even more so I'm not sure that you can say that 2000 represents a majority opinion when there are several thousand other people who haven't weighed in and either don't care or are in favor of it.

Tim Prince (1621 W 31st St) [not on sign-in sheet]: I live in the East Calhoun neighborhood. I formerly lived at 40th and Xerxes. I'm a frequent visitor of a majority of the establishments in Linden Hills. I think it's safe to say that I know the neighborhood. I want to compliment the Linden Hills neighbors. They're second to none in neighborhood involvement and not just this project, but truly as a neighborhood. They're a leader in sustainability. My neighborhood was lucky enough to follow their compost program and it's been fantastic for us. With all due respect, I believe the opposition to this project is unwarranted and unwise. The neighborhood is not a city upon itself. This is not the Linden Hills Planning Commission. Linden Hills is part of a bigger, broader city, the great city of Minneapolis. To piggyback the previous speaker, density and sustainability is as concept that this neighborhood should embrace. To put things in perspective and to add some scale to the conversation, currently adding 40 units of housing to the Linden Hills neighborhood would increase the housing stock by 1.08%. They currently have 35.6% of their housing stock as two units or more. The city has 50.4% of two units or more. My neighborhood has 62.4% of two units or more. Density is not occurring in Linden Hills, it needs to. Linden Hills is nearly 15% below the city average as it relates to housing units and 26 below on a population basis. Linden Hills has very few opportunities to increase density. This is a great project that requires only a 17 foot height variance. Again, to put that in perspective, it's the length of a parking stall, that's what we're talking about here. Forty-two feet to 59 feet is the length of a parking stall. That is apparently what is the biggest issue. My neighborhood has had three very similar projects in the last few years, all with identical concerns, all with identical opposition. Edgewater, Solheim, 1800 Lake were all either the same height or taller and all three denser. These developments had the same opposition and the same concerns. All three of these projects are now built, they're now operating and being occupied. Those people that live there have become my neighbors. My opinion is that not one negative has occurred with the development of those three projects. The doomsday predictions that were suggested here tonight and suggested when these projects were proposed in my neighborhood have not come to fruition. People were concerned and afraid just like they are here tonight. I understand that. The same arguments were made in the three developments that I mentioned. They've all come together very nicely through a project that is very similar to this. While I'm sensitive to the neighbor's

concerns, Linden Hills is part of a greater Minneapolis. The neighborhood needs to share in the density goals of the city. In 1950 we had a population of over 500,000, today we're at about 360,000. We need to get back to where we were. I encourage the commission to approve the 59 foot CUP. I encourage the neighborhood to get behind the project. I doubt you will ever find a developer and architectural team that understands the neighborhood and is sensitive to its unique character. Thank you.

John Reinen (4109 Xerxes Ave S) [not on sign-in sheet]: I've been a Linden Hills resident for ten years. I served for four years as a board member of the Linden Hills Neighborhood Council and in that capacity I also served on the zoning committee with Jeff here. I'm in favor of this project but I'm here tonight because it think it's important to note for the public record that much of the early opposition to this project was based on a fundamentally dishonest approach by some of the early opponents. I want to show you this. Is the author, the creator of this in the audience tonight? Are you willing to stand up and take credit for that? Anybody?

President Motzenbecker: Mr. Reinen, when I started this thing, I asked for respectful back and forth... let me finish or I will have you sit down. Nobody raised their voice, nobody jumped up and down and screamed to the audience from the other side and I would appreciate that you and the rest of the folks going to speak will do the same. Thank you.

John Reinen: Alright. It's important to note, last year, flyers of this picture went up all over the neighborhood and I think a lot of early opposition to the project was based on this which I think either looks like a nuclear power plant or the worst kind of example of 1970s Soviet Gulag architecture. My point is, this is a fundamentally deceptive rendering of what was planned and this is what papered the neighborhood last year and I would suggest that a lot of the opposition people who signed or sent emails is possibly based on this and as such maybe should be considered fruit of the poisonous tree. I urge you to take that into consideration. There's been a lot of heat on this project, very little light. Your job is to turn down the heat and step into the light.

Jill McIemore (5315 Ewing Ave S) [not on sign-in sheet]: My husband and I are business owners in Linden Hills. We have lived in Linden Hills and our business is there. We are completely supportive of the whole Linden Corner project.

Brian Ehlers (4548 Harriet Ave S): Up until about a year ago, I lived at 47th and York and owned the Dunn Bros coffee shop adjacent to this project. I also have two kids that live in the neighborhood and their mother still runs and operates that coffee shop in the neighborhood. Since the absence of the co-op, I feel like the whole node has experienced a very severe decline in vitality. I think that Mark represents a good opportunity to bring this back with a very public neighborhood oriented perspective. I really think it's a great thing for the neighborhood and for the community and for the younger generations to have something to bring that vitality back.

Bob Bennett (4620 Upton Ave S): It takes a village to save a village. The very nature of a village is its development and the collection of structures that comprise it. The opposition is focused on the building height, but it seems more to be rooted in a resistance to the change and a resistance to the development of anything in this largely vacant parking lot. Whatever the reason this group of developers has settled on the design, it's obvious, it's a great looking building and will be an improvement in every category. There are several much higher structures in the general vicinity and from the perspective of a pedestrian, the addition of a single story is insignificant. I frequent the village every day and usually by foot or bicycle. I value its charm

and convenience. I support this project as its proposed and I'm confident that this group of developers will deliver a high quality project as they promised. Thank you.

David Smith (4411 Thomas Ave S): I live two short blocks from the corner of 43rd and Upton. That gentleman just gave my speech. I was going to tailor what I said today to respond to some of the complaints that neighbors have made and they seem to be a lot of them related to parking and traffic and shadows, but all those things are answered in the packet of information you have. They've all been addressed by professionals and I trust your judgment in evaluating those and then comparing those to the neighbor's comments. I fully support this plan. I'd like to say I'm also very pleased that TEA2 Architects is doing it because nobody does a late 20th century style architecture better than they do. As you know they've won awards for their work. On the pocket park thing, I think that's been a little over romanticized. It's a relatively new, occasionally used feature that came into being because the space was not valuable to the present back of lot business. It's a former gas station. It will be in the way of any future building built forward to meet the sidewalk as the other corners do. I think that's a very good trade that's being offered for that. Please use your experience, good judgment and vision for a healthy, prosperous Minneapolis when you consider the Linden Corner variance requests. Thank you.

Colleen Kepler (4604 Upton Ave S): Where I live on Upton is a busy street. I expect that this development will probably make it a little busier and I have no issue with that. In our neighborhood, precedent exists for more than five stories. From what I was exposed to here tonight, it seems that additional six story buildings could be built around this. I think that precedent needs to be remembered because I hear from many longtime residents and I have lived in Linden Hills for ten years, but I would say that we also need to think into the future. With that, I think there is demand for condos and there's a lack of supply in the neighborhood. We have a sensitive developer and a dream team of designers that are very concerned about how the building fits into the neighborhood. We won't be so lucky that it turns out that a developer decides not to do the setbacks that have happened here. I think we could get a big block building. This is good for city property tax revenue, it's good for Linden Hills businesses and I fully support it. Thank you.

Bruce Manning (3921 Upton Ave S): I've been a vice chair and co-chair of Linden Hills Neighborhood Council, I've been the neighborhood's representative on a Park Board CAC, I have served for three and a half years on the Zoning Board of Adjustment so I have sat in Council Member Schiff's seat as the vice chair of that group. I commend you for your hard work and your extraordinary ability to hold a lengthy hearing. I want to note what you often must see in these matters which is that there's a certain amount of sadness. There was a plea from Mr. Ritchie and Mr. Maddox earlier that the neighborhood should try to mediate disputes. As a neighborhood this has been very trying and tense. I think we all understand why the council members haven't been involved and I commend them for their restraint to this point. My first reaction would be, as an outsider, a sort of sense of sadness that there's a rift. My butcher spoke today in opposition, my hardware guy spoke in opposition. I do want to express my support for the project and commend you for the role that you play. When I was on the ZBOA, I was able to rely extensively on the hard work of city staff and you have city staff to guide you here and they've considered this complex project very carefully. There are many strong and legitimate concerns on the other side. The project is tall. The project is big, but it's not bigger than what's allowed when the five lots are combined. The project will increase traffic; it will certainly increase the challenges of parking. I think we can all hope and expect in green Linden Hills that condo owners about to shell out a significant amount of money for condos like this are going to consider very carefully if they can manage one car living or what kind of off-street parking might

be available to them. Linden Hills is a place that encourages greenness and sustainability. As Ms. Baker noted earlier, this project does a lot of those things and should be commended. The project is tall. The question you must consider is, have they made the adequate case to move the allowed mass on the combined lots up instead of out. As Mr. Dwyer and the architect noted in their presentation, they're further set back from the limits of the neighbors than they would be and I think they've made a strong case for upping better than out here and I think staff has seen that as well and I commend that. I have great sympathy for the neighbors along Vincent for the people who are going to be immediately adjacent to this project. I certainly don't enjoy construction on my block. We've had seven variances in 11 years that I've been there, including one of my own. My neighbor in the back and I can see into each other's backyards and I do have to close the curtains in my bedroom, nobody wants to see me naked, and that's part of living in a city. I am tremendously sympathetic to the destruction that this construction will cause, but it may not be much greater than any other construction. The additional difficulties of this construction may have to do with the remediation on the site which is a definitive improvement and the two levels of underground parking which are a definitive benefit to the neighborhood. Still, I understand why you don't to live behind it. To date, these neighbors have enjoyed an underused and under built asphalt surface and a little more peace and quiet than they're going to get. On the other hand, that is why some of the earlier speakers said you are not the Linden Hills Planning Commission. I served with Jeff and others on the zoning committee for Linden Hills that heard this report and it was a divisive hot hearing with a lot of passion on both sides. You're removed from that and you're asked to evaluate the standards staff has laid forward for you that were laid forward by the law and the information from all sides. While I have tremendous sympathy for these neighbors, you have to have sympathy for the City's goals and development. I know from watching your work for many years that you do and you will consider that carefully. Regarding this pocket park, which came about as a bit of a surprise because of the position of Public Works in opposing the vacation of the easement. The word park for that space, and frankly the word park for the space that the space the developer has proposed, is wildly overblown. I think you've got 800 square feet behind the podium from wall to wall. The developer's space, which might be 1400 or 1600 feet, is not wildly bigger. These aren't parks, we're not going to fool ourselves into confusing this with one of our many lovely neighborhood parks. It is an important gathering space. It's a gathering space if you have a small family and you're having lunch from Clancey's with another small family. If you're both there, you've filled it. With a larger space, there might be more gathering. I think the creation of a bus stop space or public access space on the cut back corner of the building is going to be a plus. This is going to be a change, but I think it's going to be a change for the better or not worse. I agree that the increased size and increased features are for the better. In closing, you have an important decision to make and also a very important power about how you make that decision. I live and shop in this neighborhood. You have to look at the big picture. As you examine what you think is right to do, you have the power to condition the living out of your approvals. I want this development to be as it's drawn or pretty darn close. Things arise in the course of building but we're having expectations in the neighborhood of a certain kind of green building, certain kind of material, certain kind of finish, a maintenance of that new pocket park and that can all be addressed in the kind of approval that you give. CCRs can be placed on the conditions about site plan review, about building finishes, about access. There are some tough issues here. Mr. Dwyer has been in the neighborhood and been a head of the business association. I believe this team can live with the conditions you put on it. I encourage you to put strong conditions that protect the neighborhood that everybody on both sides of the aisle love, we just have a little bit of a different vision about how to go forward. I hope when we do go forward we're able to go forward together. Thank you.

Ruth Usem (4700 W Lake Harriet Parkway) [not on sign-in sheet]: From the time I was 15 on, I have lived in southwest Minneapolis and used the library for studying and watched the gas station go and I watched Lake Harriet school go and I watched Butler Drug go. I have seen any number of changes in our southwest Linden Hills area. I did not come here prepared to speak tonight but I feel compelled. I'm in favor of the project because I think that we have a sensitive developer. I'm counting on that. It's a first class architectural firm. The neighbors, whether they are pro or con for this, really deeply care about how it turns out. I live next door to a McMansion on one side and a home that was fit in to an area that where my house actually owned space on that property and it seems to all come together very nicely now, it wasn't so in the beginning. I found a little saying in my fortune cookie the other day that said, "everybody likes progress, nobody likes change." Thank you.

Barbara Kippers (4500 Upton Ave S) [not on sign-in sheet]: I've lived in my house with my husband for 34 years. I think if you've noticed nothing else here, you've probably learned that many of us are long time residents of this area. I have seen my babysitter speak tonight, the merchants that I visit speak tonight and we're on various sides of this issue. I support the project. I like the setbacks. I like the idea of after 34 years starting with one car. I think it looks great, I like the set backs, I do not think it's too dense. If anything, I would urge you to go to the 59 foot height. Those of us who are living in these older homes have wonderful ceiling heights, it gives us a sense of space in those rooms and I think that's important for those of us who would like to remain in the neighborhood and in the city. Thank you for your consideration.

Kathleen Oganovic [not on sign-in sheet]: I'm a representative of Greater Minneapolis. I live in the Fulton neighborhood, I've lived there for 20+ years and I've lived in southwest Minneapolis for most of my life. I've enjoyed Linden Hills for many years with my son. I also currently live in Fulton, two blocks away from the 50th and France neighborhood. In my lifetime I have seen enormous changes in the 50th and France neighborhood. Those changes have only made 50th and France more beautiful and we have brought in more businesses and more people to the area and I have so many friends and neighbors that are jealous of where we live, two blocks away from that development. My husband and I have reached the point in our lives where we'd like to downsize and we'd like to live in a condominium and we're so excited to hear about Linden Corners. Many people who are friends or neighbors of mine have spoken and I'm sorry that they feel so sad about losing what is, but I think this development represents the future and it represents what beautiful things can happen here in Minneapolis. Thank you.

Linea Palmisano (4309 France Ave S): I love that change gets people more involved in their neighborhood. That's important to remember because watching the opposition group the last four months has been painful, embarrassing even. Four years is how long this developer has been actively working with the neighborhood on this project. I know because I was chair of LHNC. This project has made use of every tool of good neighborhood design I've ever seen, many of which has been published by the city. Extensive conversations have happened in our neighborhood over the past four years. When monthly meetings became nothing but another opportunity to yell at the developer, that dialogue stopped. Design rings were formed in good faith by the developer and I think they informed the project. I appreciate you have a difficult role tonight made harder by a small group of concerned but organized citizens that are trying to grow support for their cause. I ask you to consider the words of opposition in this context, Linden Hills has close to 8000 residents, 6000 are adults, there are two business associations, dozens of small business owners and I'm guessing around 1000 dogs that would like to drink from that little doggy fountain that's being proposed by the developer. I ask that it be known that the majority of letters before you are the result of very disingenuous work by a small, but spirited, activist group

that has spread significant misinformation to residents, journalists and restaurant goers in our hood. I ask you to seriously question the number of informed signers. I was solicited three times, each time with inaccurate project information. This group, with a single platform that the developer was breaking the law, has gained support and even got themselves elected to our neighborhood association. Open house, I've never left our park building more upset. Run by the neighborhood association, I was handed a protest sign and shoved up to a booth to flood city planner, commissioner and council member email boxes. This isn't a neighborhood association that helps inform your processes, synthesize and translate neighborhood feedback in tangible ways, this is a group that wants to take their own vote on the project. This isn't the role of a neighborhood association. LHNC isn't representing our whole neighborhood. I, like Bruce, am a former neighborhood association leader and volunteer. I come tonight to ask that you not offer this opposition group the credentials or good will that you extend to a neighborhood association. That's very hard to ask, because I spend many years of my life trying to grow the reputation of this neighborhood association and assist city hall in evaluating local projects. I appreciate the concerns of those opposed. We all come to this disagreement with compassion, but I especially commend the energy and the honesty and the communications of this development group and the tireless efforts of city planner Dvorak to keep up with it all. This decision is yours and I especially urge you to arrive at a decision tonight. Thank you.

Jack Newton (3614 W 44th St): I've lived in Linden Hills for 21 years. We didn't move into the neighborhood because we thought it was a neat small village or because of the business node, but because there was a new townhouse for sale on 44th St that we wanted to buy and my daughter was opening a small business a couple blocks away and if we lived there I would be able to help her out from time to time. We love living in the neighborhood. We love the neighborhood. We love its proximity to the lakes but we're not there because of the business node or even the small village. I spent six years on the Linden Hills Neighborhood Council board, one of those years as its secretary, four years as a co-chair and some of that time as a housing committee chair. Over and over again, we heard in meetings from seniors that were living in Linden Hills were empty nesters, how much they liked living in Linden Hills and would really love to stay there but there was no place for them to move. As a couple of speakers previously have indicated, this development would give them a place to move. I basically favor the development because I think it would revitalize that business node at 43rd and Upton and revitalize the neighborhood as a whole. Thank you.

President Motzenbecker closed the public hearing.

Commissioner Tucker: There were a couple of questions, do you Mr. Wittenberg or Ms. Dvorak, have a comment on the need for a CUP for mixed-use?

Staff Dvorak: The zoning code...well, I can't tell you how many mixed use projects the Planning Commission has approved in the 12 years that I've been here...100, 200 maybe, if not more. The zoning code recognizes mixed use as part of a one to four unit building in some zoning districts and then recognizes multi-family and commercial. It's just inherent that we don't specifically have a line item in our zoning code in all zoning districts that say mixed use is five plus units. The City Attorney has weighed in on this issue and he says it's a non-issue.

Commissioner Tucker: It was brought up the rezoning process when not all parcels were the same and how that's handled, can you comment on that?

Staff Dvorak: We did meet with the attorney's office on the R4 C1 question early on in this process, maybe a year or so ago. We looked at the zoning code, 535.210 (b) (1a) overall predominance of the C1 zoning does constitute us to look at and evaluate the site under all C1.

Commissioner Tucker: On the circulation, has Public Works looked at the circulation and signed off on how it's going to work and where the curb cuts are?

Staff Dvorak: Yes, the TDMP has been signed by Public Works.

Commissioner Tucker: If one wanted to add a condition talking about the vacation of that easement, where would one add a condition that the design has to be approved by Public Works and CPED? Would that go in site plan or vacation?

Staff Dvorak: I would put that in site plan review.

Commissioner Tucker: I will move the return of item A (Huynh seconded).

President Motzenbecker: Any further discussion? All in favor? Opposed?

The motion carried 6-0.

Commissioner Tucker: I will move approval of item B to 59 feet (Huynh 2nd).

President Motzenbecker: Any further discussion?

Commissioner Huynh: I just want to speak in favor of item B for the conditional use permit to increase the height. I think that, although it is technically five stories just because there are five floors, the building is built to a four story level or just beyond it at 59 feet. If they were going for a full five story height limit, they would go for 64 feet. I believe that they, with their design, have made a lot of accommodations to try to minimize the height with their design. I believe it fits within the context of the neighborhood.

Commissioner Schiff: Several speakers spoke about how council members have not been part of the process because we're not supposed to be and I can attest to that, I haven't spoken to my colleagues about this project yet, but I certainly heard the noise, the collective voices from the neighborhood's coming in the months preceding this public hearing. When I got my Planning Commission report, I was really surprised to find there was no rezoning associated with this application and really stunned to find out that this scale size of a project was permitted in a C1 district. A C1 district is supposed to be our lowest density commercial district. Somebody talked about projects on Lake Street and in Uptown and Lyn-Lake and that's where I think of this project fitting, on a transit corridor, not in a neighborhood that's predominantly single family homes that isn't served well by transit. When you put this type of smart growth, which it is, but without the transit, you end up with too much density and too many cars. I read the zoning code and I see the height limitations in the C1 district is two and a half stories or 35 feet, however, when a mixed use development is allowed, it can be increased to three stories or 42 feet. We're still way beyond the intent of the code at this point and I just can't bring myself to support this level of density in a C1 district. I'm honestly surprised that our zoning district allows this type of proposal to even come forward in a C1 district. I don't think anybody would say this represents the lowest density commercial district zoning in the city of Minneapolis. Other cities would be amazed, I know that much. I can't get to the full height that the developer is seeking tonight.

Commissioner Tucker: At the base of this is the question of how much one can put on that piece of land. You have a certain square footage of land and a permitted FAR and that's the 90,000 square feet and then the question becomes how do you want to arrange that 90,000 square feet. I think the architects have come up with a very good solution to that problem. The setbacks on the upper stories diminish the impact, certainly from the street as you walk by the project, of that extra height. They have given extra setbacks on two of the fronts which I think helps a lot and also a setback from the houses to the west. I think we're probably better off putting that package in the way the architects are proposing than spreading it out over the whole site at 42 feet. That's why I am in support of this application.

President Motzenbecker: I agree with Commissioner Tucker and Commissioner Huynh. I think the deep cornice line that has been placed on the building by some very talented and very thoughtful architects who are completely used to doing this type of scale of residential development. As I look at the model from all angles, and I want to reiterate that we've seen this model before, and especially from where I'm sitting now it makes it even easier to look across the datum of all the roofs in this area and see how that third floor cornice line which comes in at 42 feet, which is what they have of right, is pretty much in line with almost everything I can see surrounding it. It's a little lower at the corner but substantially larger in all directions from there. I don't think 40 units is high density at all. I'm working on projects that are 240, 250, 280 units—that's high density. Forty units I would say is low density. I'm not going to discredit any of the commentary that's been said here tonight. I think it's all completely valid. I understand that personal identity is tied to place. I understand that people choose to live in an area because it speaks to something in themselves. When things come along, change, taller buildings, bigger buildings, a different park, anything that might change that, it threatens a personal identity. I've been in the same situation. I was president of the Kingfield neighborhood for many years and have experienced similar questions. I want to speak to context. I think context has been framed by some tonight by others differently. Context is more than 50 feet from a property. The city sends relevant letters to a 350' radius, so that's what the city feels is a general context. I would argue that it even goes farther out. The six story building up the hill is 250' feet away, I'd say that's within the context of this area. I think all those pieces that are surrounding in that circle contribute to that context. To say that it's just this very small central space is a little incorrect as far as calling out what context is appropriate. I don't really have anything else to say there. Comments were made that taller buildings will ruin the business node, but there was really no proof given to that. There are taller business buildings at business nodes all over the city. I will recognize the fact during construction, that is difficult for businesses and there have been many instances of difficulty shown by businesses. I have a concern for that as well. I don't want to see any of these businesses go out of business. I live close by and I use them myself. I want to see them still in place. We also have to recognize that we live in the city. Neighborhoods aside, we have chosen to live in a city which is a dense environment that has varying levels of density and varying levels of people. The house I live in is three stories. Every side is surrounding by mid-density, four story buildings on all sides of my house. To the privacy issue, I can look out my second story window and look into all my neighbor's yards and I don't even have a balcony. I think the commentary, even if they had 42 feet and three stories as of right, you're still going to be able to look out into the surrounding area. I think that's part of the reason why people would purchase higher things as well, to be able to see the view. That's enough said with this. The 59 feet is appropriate. I think the 42 feet as of right, as was mentioned, the length of one car, especially given the extensive setbacks, this developer has created setbacks that we as a Planning Commission do not see very often at all. Stepping back this much to basically hide, if you were

walking to the street, the amount the cornice sticks out and the amount the buildings are set back, if you were at the base of the building you would not see the top two floors.

Commissioner Tucker: I just want to clarify, when I made that motion, I just meant to change condition two that the height of the building should be limited at 56. Conditions one and three are still part of my motion.

President Motzenbecker: Any further discussion? All in favor? Opposed?

The motion carried 5-1 (Schiff opposed).

Commissioner Tucker: I'll continue with the variance for the overlay district, I move approval (Huynh seconded). Moving it back, particularly on 43rd, gives a little more room right there which I think is beneficial to this neighborhood node.

President Motzenbecker: Any further discussion? All in favor? Opposed?

The motion carried 6-0.

Commissioner Tucker: I'll move variance D, the setback for the front yard (Schiff seconded).

President Motzenbecker: Any further discussion? All in favor? Opposed?

The motion carried 6-0.

Commissioner Tucker: I think before going to the site plan review we should figure out if this street vacation will happen or not so I will move staff recommendation for F, the vacation (Huynh seconded).

President Motzenbecker: Any further discussion?

Commissioner Tucker: I think the point was made that that corner was fixed up that way with the easement because it was a parking lot. Now that it's become a commercial corner, I think it needs to change that space. I will offer a condition for the site plan review requiring that the design of that be approved by Public Works, CPED and consultation of neighbors but I will leave that to CPED to do.

President Motzenbecker: Any further discussion? All in favor? Opposed?

The motion carried 6-0.

Commissioner Tucker: I will move the site plan review as recommended by staff and add a sixth condition that the specific elements, materials and layout of the proposed pocket park on the boulevard along Upton must be approved by Public Works and CPED staff in consultation with the neighborhood (Mammen seconded).

President Motzenbecker: One of the things I was concerned with is the garbage and circulation through the site. Knowing that that can be done, don't know if just having the height limiter bar is for the garage or what the intent was for that, if it can be removed or if we can create some

loading areas off that back space, I think that would be a good compromise to get these garbage trucks and larger vehicles off the streets.

Jeff Wrede (Momentum Design Group): As you can see, the section here shows the floor to floor heights of how we came up with the 58 foot eight. That takes into account a two foot structure on the wood frame structure above the pre-cast on the first floor. The first floor is precise so we have pre-cast plank and pre-cast beams. The bottom of the beams are at 11 feet so therefore we need plumbing to go underneath them so we're looking at ten feet to the bottom to the ceiling and that happens throughout the retail portion but also on the back of the site where the building overlaps so we're limited to ten feet. We cannot get a garbage truck in there simply because of the height of the building. We tried to keep the height of the building as small as we possibly could.

President Motzenbecker: Can you get a garbage truck in before you get under that building?

Jeff Wrede: Yes we could. We could structure the plank in order to do that. We have plank in this area right here and we have plank starting right here. The height limiter bars are there so we don't have people driving excessive height vehicles into the underside of our building. Another thing that came up in Public Works is they didn't like us backing out on to the streets.

Commissioner Kronzer: I do think it's important to get loading off of the street, 43rd is a tight street.

Commissioner Huynh: I think that garbage and waste removal could be accommodated off of 43rd. If you can restructure your plank so you can at least move it northward so you can allow a garbage truck to drive in and back up and allow a circulation pattern, I think it can be done on site. I think that just a little restructuring and moving your plank to the north would allow for that to be accommodated on site. If you could at least look at that and evaluate that, I think it'd be worthwhile. I think it is possible if you just have it off of 43rd.

President Motzenbecker: So either that or just looking at garbage trucks backing in from 43rd to begin with and they can just drive straight out. I'm going to add a condition that the applicant work with staff to explore that in detail to see which of those two would work best. I think it can be done and I think we have to have the loading off of the street. Any further discussion? All those in favor? Opposed?

The motion carried 5-1 (Schiff opposed, Wielinski not present for the vote).

**Excerpt from the
CITY PLANNING COMMISSION MINUTES
Minneapolis Community Planning & Economic Development (CPED)
Planning Division
250 South Fourth Street, Room 300
Minneapolis, MN 55415-1385
(612) 673-2597 Phone
(612) 673-2526 Fax
(612) 673-2157 TDD**

MEMORANDUM

DATE: January 10, 2012

TO: Steve Poor, Planning Supervisor – Zoning Administrator, Community Planning & Economic Development - Planning Division

FROM: Hilary Dvorak, Interim Planning Manager, Community Planning & Economic Development - Planning Division, Development Services

CC: Jason Wittenberg, Interim Planning Director, Community Planning & Economic Development Planning Division

SUBJECT: Planning Commission decisions of January 9, 2012

The following actions were taken by the Planning Commission on January 9, 2012. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued.

Commissioners present: President Motzenbecker, Carter, Cohen, Huynh, Kronzer, Luepke-Pier, Mammen, Schiff, Tucker and Wielinski – 10

Committee Clerk: Lisa Baldwin (612) 673-3710

7. Linden Corner (BZZ-5420 and Vac-1596, Ward: 13), 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S ([Hilary Dvorak](#)).

A. Conditional Use Permit: Application by Carol Lansing with Faegre & Benson, on behalf of Mark Dwyer with Linden Hills Redevelopment, LLC, for a conditional use permit for a multiple-family dwelling with 40 dwelling units located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S.

Recommended Motion: The City Planning Commission continued the conditional use permit for a multiple-family dwelling with 40 dwelling units located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S to the January 23, 2012 Planning Commission meeting.

B. Conditional Use Permit: Application by Carol Lansing with Faegre & Benson, on behalf of Mark Dwyer with Linden Hills Redevelopment, LLC, for a conditional use permit to increase the height of the building from 3 stories/42 feet to 5 stories/59 feet for property located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S.

Recommended Motion: The City Planning Commission continued the conditional use permit to increase the height of the building from 3 stories/42 feet to 5 stories/59 feet to the January 23, 2012 Planning Commission meeting.

C. Variance: Application by Carol Lansing with Faegre & Benson, on behalf of Mark Dwyer with Linden Hills Redevelopment, LLC, for a variance of the LH Linden Hills Overlay District to allow the building to be located more than 8 feet from the front and/or corner side property lines adjacent to Upton Ave S and W 43rd St for property located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S.

Recommended Motion: The City Planning Commission continued the variance of the LH Linden Hills Overlay District to allow the building to be located more than 8 feet from the front and/or corner side property lines adjacent to Upton Avenue South and West 43rd Street for property located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S to the January 23, 2012 Planning Commission meeting.

D. Variance: Application by Carol Lansing with Faegre & Benson, on behalf of Mark Dwyer with Linden Hills Redevelopment, LLC, for a variance to allow bicycle racks and a vehicle height limiter (an overhead bar with columns) in the required front yard setback along Upton Ave S for property located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S.

Recommended Motion: The City Planning Commission continued the variance to allow bicycle racks and a vehicle height limiter (an overhead bar with columns) in the required front yard setback along Upton Avenue South located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S to the January 23, 2012 Planning Commission meeting.

E. Site Plan Review: Application by Carol Lansing with Faegre & Benson, on behalf of Mark Dwyer with Linden Hills Redevelopment, LLC, for a site plan review for a mixed-use building located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S.

Recommended Motion: The City Planning Commission continued the site plan review application for the property located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Ave S to the January 23, 2012 Planning Commission meeting.

F. Vacation: Application by Carol Lansing with Faegre & Benson, on behalf of Mark Dwyer with Linden Hills Redevelopment, LLC, for a right-of-way vacation (Vac-1596) for a trapezoidal area adjacent to 4264 Upton Ave S.

Recommended Motion: The City Planning Commission continued the application to vacate the trapezoidal area adjacent to 4264 Upton Ave S to the January 23, 2012 Planning Commission meeting.

President Motzenbecker: Number seven was scheduled for discussion tonight until I just received, as I sat down, a charge from the Environmental Quality Board and our City Attorney. Apparently, a citizen's petition was filed this afternoon for an EAW to be performed on this site. I'm going to read the letter from the City Attorney into the record so that this is covered and so people understand what is going on. I was ready to have this discussion this evening, so unfortunately, this throws a little wrench in the works. Here is the letter:

“Dear President Motzenbecker and Members of the Planning Commission:

By letter dated January 5, 2012, the state Environmental Quality Board (EQB) certified a citizen petition for an Environmental Assessment Worksheet (EAW) on the proposed Linden Corner development project and assigned the City of Minneapolis as the Responsible Governmental Unit (RGU). The letter (and an accompanying email) from EQB Executive Director, Bob Patton, was addressed and sent to former City planner Michael Orange, who retired from City employment over three years ago. The EQB letter and RGU assignment were not received by current Planning staff until 11:53 a.m. today (email transmission time stamp).

It is undisputed that the proposed project does not meet any of the mandatory EAW categories. Minn. R. 4410.4300. Therefore, the next step is to determine if the project falls under any of the exemption categories listed in the environmental review rules. Minn. R. 4410.4600. If the project is exempt, it does not qualify for environmental review and no discretionary EAW can be ordered (either by citizen petition or government fiat). Minn. R. 4410.1000, subp. 3. The residential component of this project is exempt under Minn. R. 4410.4600, subp. 12(A)(4). The commercial component is exempt under Minn. R. 4410.4600, subp. 10(A)(3). There is no exemption category specifically applicable to a mixed-use project per se, although each individual component (residential and commercial), if standing alone, would clearly be exempt. Minn. R. 4410.4300, subp. 32. Prior to receiving the EQB-validated citizen petition; therefore, my initial assumption was that this project was exempt from environmental review.

The EQB-prepared “A Citizen’s Guide: The Petition Process” (page 4, steps 2-3 on right side of page) indicates that the citizen’s group “consults with EQB staff to determine whether the project qualifies for environmental review” before gathering the required number of signatures. The determination of whether a project “qualifies” for environmental review is whether an exemption applies (see page 5). It is not known whether the citizen group consulted with the EQB in this fashion before submitting the petition. However, because the EQB has now forwarded the citizen petition and assigned the City as the RGU, one must assume at this point for purposes of today’s public hearing that this mixed-use residential-commercial project is potentially not exempt in the interests of careful consideration and great prudence.

The City now has an obligation to respond to the petition. This will occur at a meeting of the Zoning & Planning Committee of the City Council on January 19, 2012. In the interim, there is a prohibition on final governmental approvals pursuant to Minn. R. 4410.3100. Although the rules do not prohibit taking public testimony today (only prohibits final vote to approve; can deny), in the interest of subject matter continuity and coherence, my advice to the Planning Commission is to continue any consideration of this matter today. Planning staff can advise the Commission on the appropriate continuance length.”

With that being said, and as this has come from the public, it is my determination that this will be continued. I’m sorry. I apologize to all of you that have come out and taken time out of your day expecting to testify today, but this was not of the City’s doing. We were responding to a citizen’s petition that we have to adhere to by Minnesota Statutes. I hope you understand that and can understand that we’re kind of in an awkward position as well. With that, this is slated to be continued until the January 23, 2012 meeting of the Planning Commission. Can I have a motion to approve the agenda as amended?

Tucker/Huynh 2nd

The motion carried 8-0.

